

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 9th DAY OF FEBRUARY 2010

BEFORE

THE HON'BLE Mr.JUSTICE AJIT J.GUNJAL

WRIT PETITION No.12076 OF 2008(GM-RES)

BETWEEN:

Bangalore International Airport Limited,
A Company incorporated under the provisions
Of the Companies Act, 1956,
Having its Registered office at
No.118, Gayathri Lakefront,
Outer Ring Road, Hebbal,
Bangalore-560024
And represented by its
Head-Legal & Company Secretary and
Authorised Representative
Sri A. R. Rajaram

...PETITIONER

(Sri Sajan Poovayya, Adv. for Poovayya & Co.)

AND:

1. Karnataka Information Commission,
Represented by its Authorised Representative,
M.S. Buildings, 3rd Stage, 3rd Floor,
Dr. B.R. Ambedkar Road,
Bangalore 560001

2. Sri Benson Issac
Major, father's name not known,
No. 427/2, 12th Main, 7th 'A' Cross,

Yelahanka New Town,
Bangalore 560064

3. The Public Information Officer,
Karnataka State Industrial Investment
Development Corporation Limited
No.49, Khanija Bhavan,
East Wing, 4th Floor,
Race Course Road,
Bangalore 560001

...RESPONDENTS

(Sri Clifton D' Rozario, Adv. for Sri Jagadeesh B.N. for
C/R2, Sri Narendra Prasad, HCGP for R1, Sri P.S.
Manjunath Adv. for R3)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to set aside the order passed by the R1 dated 18.08.2008 passed in KIC 1286 COM 2007 as per Annexure-E and further be please to declare that the petitioner is not a 'public authority' as defined under Section 2(h) of the RTI Act.

This writ petition having been heard and reserved coming on for pronouncement of orders this day, the Court made the following:

ORDER

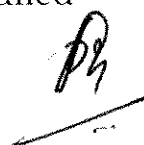
The petitioner is questioning the order passed by the first respondent on 18th August 2008, copy of which is produced at Annexure-E and is seeking a further declaration that the petitioner is not a public authority as



defined under Section 2(h) of the Right to Information Act (for short, 'the RTI Act').

2. The facts leading to initiation of these proceedings can be summarized as follows:

The petitioner i.e., Bangalore International Airport Limited (for short, 'BIAL') is a company incorporated under the provisions of the Companies Act. The specific case of the petitioner is that it is not a Government company as defined under Section 617 of the Companies Act, 1956. A Shareholders Agreement (SHA) dated 23.01.2002 was entered into between the Karnataka State Industrial Investment and Development Corporation Limited (KSIIDC), Airport Authority of India (AAI), Siemens Project Ventures GmbH, Flughafen Zuerich AG, Larsen and Toubro Limited and Bangalore International Airport Limited ('BIAL'). The agreed percentage of holding was 74% with Siemens Project Ventures GmbH, Flughafen Zuerich AG and Larsen & Toubro Limited (together called

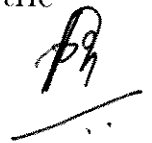


as "Private Promoters") and 26% with KSIIDC and AAI (as "State Promoters"). The purpose of this particular venture was to develop an international airport with private sector participation at Devanahalli near Bangalore as a Greenfield project. Under the SHA, the management of the affairs of the company vests in the Board of Directors and under Clause 9.1(ii) of SHA, the Directors representing the Private Promoters constitute the majority of Directors of the Petitioner. Further, under the Amendment and Restatement Agreement to the Shareholders Agreement dated 10th June 2005, the Chief Executive Officer, who is in charge of the day-to-day affairs of the Company, is nominated by the Private Promoters. If various clauses of the SHA are read together, they would clearly indicate that the BIAL is not owned by a Government agency. The 26% holding of equity by the State Promoters, according to the petitioners, cannot be classified as substantial nor does it make BIAL a company owned by any Government agency. The specific case made



out by the petitioner is that they cannot be classified as "Public functionary", inasmuch as, all the employees of BIAL are "private" employees and not Government employees. Hence, they would contend that they cannot be classified as a public authority in any manner.

3. The Second respondent makes an application under Section 4(1)(b) of the RTI Act seeking suo motu declaration by the petitioner as to the contents provided under Section 4(1)(b) of the RTI Act. The petitioner replied to the said query indicating that it is not a public authority as defined under Section 2(h) of the RTI Act. Hence, it is not required to make such a declaration under Section 4(1)(b) of the RTI Act. The second respondent aggrieved by the said endorsement, moved the Karnataka Information Commission. The complaint of the second respondent before the State Information Commission is under Section 18 of the RTI Act, inasmuch as, the Commission has power to receive and inquire into the



complaint from any person wherein it has reasonable ground to do so. The petitioners would contend that the said powers cannot be invoked unless it is classified as a public authority within the meaning of RTI Act. The State Commissioner nevertheless took up the matter for adjudication opining that the matter involves substantial questions of law and posted the matter for hearing before the Full Bench of the Commission. But however, instead of referring the matter to the Full Bench as per the provisions of Rule 4 of the Karnataka Right to Information (Constitution of Benches) Rules, 2006 decided to hear the matter himself and recorded a finding pursuant to its order dated 14.05.2008 that the petitioner is a public authority as defined under the Act and directed the petitioner to provide necessary information to the complainant within one month. Aggrieved by the said order, the petitioner filed a writ petition before this Court in W.P.No.8127/08. One of the contentions raised was that the State Chief Information Commission (SCIC) had



no jurisdiction to pass order on 14.05.2008 having regard to the fact that the matter was required to be heard by a Full Bench. This Court accepted the writ petition on 21.07.2008 and remanded the matter to the Information Commission directing the SCIC to constitute a Full Bench and hear the matter afresh. Pursuant to the order passed by this Court, a Full Bench was constituted and the matter was heard afresh. Elaborate arguments were advanced and in addition, written arguments were also filed on two days i.e., 07.08.2008 and 13.08.2008, a copy of the written submission is also made available. The Full Bench of the Commission after hearing the arguments and the written submissions made, once again recorded a finding that the petitioner is a public authority as defined under Section 2(h) of the RTI Act and directed the petitioner to provide necessary information to the Second respondent within a period of one month.

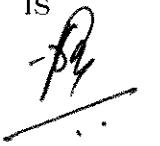


4. The main contention of the petitioner in this proceeding is that the SCIC was not justified in holding that the petitioner is a public authority so as to attract the provisions of RTI Act. The petitioners would press into service the definition of Section 2(h) as to who is a public authority. They would primarily contend that to attract the said definition, it is essential that the said body must be owned, controlled, or substantially financed directly or indirectly by funds provided by the appropriate government. The contention of the petitioner is that it is not a body which comes under the definition of body owned, controlled or substantially financed by the funds provided by the appropriate Government. Indeed, they would submit that the words "substantially financed" has not been defined in the RTI Act. The words "owned", "controlled" and "substantially financed" has to be read conjunctively. The reason as to why the SCIC recorded a finding that the petitioner is a public authority is on the basis of the SHA. The BIAL was substantially financed by



the Government. According to the respondents, it is not partly controlled or partly owned but substantially financed, observed that, apart from the equity contribution from AAI and KSIIDC, the petitioner has also taken an interest free loan of Rs.350 Crores from the Government of Karnataka and is therefore substantially financed by the Government and it can be classified as "substantially financed".

5. Indeed, the SCIC has relied on Section 14 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (for short, 'the CAG Act') to hold and decide as to what is substantially financed. The petitioner's case is that the loan advanced by the State Government of Rs.350 Crores is far less than the 75% of the total project cost of the petitioner and the loan was not given from the consolidated fund of the State. Thus according to them, on both the counts they cannot be classified as Public authority nor the petitioner is



substantially financed by the Government, cannot be stated as a State and it is not amenable to the jurisdiction under the RTI Act.

6. Thus, on these two broad premise, the petitioner would contend that the impugned order passed by the SCIC directing them to post the information as contemplated under Section 4(1) of the RTI Act is liable to be set aside.

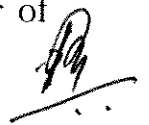
7. On notice, respondents have entered appearance. They would totally deny and traverse the averments made by the petitioner in the writ petition. They would reiterate that the petitioner is a public authority defined under Section 2(h)(i) of the RTI Act. According to them, the only question which is required to be answered by this Court is whether the petitioner satisfies the definition of public authority under the Act. According to them, it is of no consequence as to whether the nature of the project is a public, private, or partnership. According to them, the



petitioner BIAL is a joint venture project and is partly owned by the State Promoters. According to them, apart from 26% equity, the State promoters, including the Government of Karnataka have also provided a large amount of financing, which, when quantified would be more than the estimated thousand crores. The financial contribution of the Government to BIAL, though may not be in the nature of funds but however as other benefits and exemptions. According to the respondent, the State Government has acquired about 4000 acres of prime agricultural land by paying enormous compensation to the farmers. According to them, it would run into hundreds of crores considering the high value of land. The said 4000 acres has been given on lease to BIAL at a token concessional rent of Rs.1. The respondent has also enumerated several other infrastructure provided by the State Government stating that if they are calculated in terms of money, it would be much more than their stake of 26%. Hence, according to the respondents, the



petitioner is an authority, which is substantially financed by the State Government. They, also in the statement of objections, have given the finances provided by the Private Promoters and by the State Promoters. According to them, the State Promoters have contributed a sum of Rs.434.94 Crores which would be 22.53% of the project cost. They would also contend that the petitioner has been granted exclusive privilege to develop the BIAL under the concession Agreement executed by the Government of India on 05.07.2004. Thus, according to them, it falls within the ambit of sub-clauses (ii) of Section 2(nn) of AAI Act, 1994. They would further contend the order passed by the Commission that the so called lease is more in the nature of risk capital in financial parlance as *quasi equity*, since it carries no interest is subordinate to the loans given by the Banks. Thus, they would contend that the petitioner BIAL is a public authority and it has been substantially financed by the Government so as to attract the provisions of RTI Act. They would justify the order of



the Commission for importing the definition of 'Substantially financed' as stated in the CAG Act. Even otherwise, they would contend that the Dictionary meaning of "substantially financed" would clearly indicate that the provisions of the Act are attracted. They would also refer to the various agreements entered into between the petitioner as well as the other entrepreneurs.

8. Mr.Poovayya, learned counsel appearing for the petitioner would vehemently contend that the BIAL is not a public authority as defined under Section 2(h) of the Act. He has taken me through the relevant provisions of the Act to show as to who is a public authority. He would reiterate that 74% of the equity share holdings of the BIAL would amount to Rs.241.76 Crores as owned by private promoters while the State Promoters i.e., AAI as well as KSIIDC have provided a meager sum of Rs.84.94 crores i.e., 26% of the equity capital. The total outlay of the project was Rs.2470 crores, out of which a sum of



Rs.434.94 Crores has been contributed by the State Promoters. Insofar as the financial facility provided by the State to the extent of Rs.350 Crores is concerned, he submits that it is in the form of loan which is repayable by the BIAL in 20 equity half yearly instalments as provided under schedule 10 of the SSA. He would pointedly refer to clause 3.10.3 of the SSA to buttress his contention that the petitioner will use such surplus for earlier/accelerated repayment of the outstanding loan amount. According to him, the mere sanction of loan by the Government cannot be termed that the project is "substantially financed". Elaborating his contention, he would submit that the petitioner is required to repay the loan to the Government as set forth in the SSA. Hence, the petitioner's debt to the Government is similar to the debt by the petitioner to the private promoters. He would further contend that the role of State in BIAL is only limited to the reserved activities and Air Traffic Control as provided for by the Concession Agreement and the CNS/ATM Agreement. He further



submits that the AAI Act, 1994 was amended pursuant to amendment Act 43 of 2003 and it was to bring about greater "operational and managerial independence" as stated in the statement of objects and reasons of 2003 Amendment Act. Insofar as importing the definition of substantial funding as stated in Section 14 of the CAG Act is concerned, he submits that the said definition of "substantially financed or controlled" would operate in different fields and the Commission could not have relied on the said definition to hold that the petitioner is substantially financed by the State. He would contend that the CAG Act is not in pari materia with the RTI Act. Thus, the meaning of "substantially financed" as defined in CAG Act, is not applicable. His last contention would be that all Public Interest Information relating to BIAL is already available to the public and can be accessed by approaching the information officer of KSIIDC. Thus, there is no prejudice to the rights of the individual

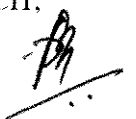


enquiring about information on BIAL. Indeed, he would submit that BIAL has, by itself provided certain details of its composition and working on its web-page even though it was not required to do so. Thus, he submits that the RTI Act is not at all applicable and the BIAL is not a State as defined under Article 12 of the Constitution of India. Nevertheless, he would submit that this Court has ruled that BIAL is a State and the matter is pending before the Apex Court.

9. Mr.Clifton D'Rozario, learned counsel appearing for respondent No.2 countered the contentions of Mr.Poovayya emphasizing and reiterating what has been stated in the statement of objections contending that the BIAL is a public authority as defined under Section 2(h) of the Act. The learned counsel would press into service the share holders agreement, the concession agreement and the State Support Agreement in support of his contention that the BIAL is a "public authority" and it has been



"substantially financed" by the State. According to him, the recitals of the Concession Agreement would clearly indicate that the BIAL has been established with the participation of KSIIDC, AAI, Siemens Project Ventures, GmbH, Flughafen Zuerich AG and Larsen and Toubro Limited, each of whom has agreed to participate as a shareholder in BIAL for the development, design, financing, construction, completion, maintenance, operation and management of the Greenfield airport at Devanahalli. Relying on the recitals of the SHA, he would contend that the Government of Karnataka and the Government of India have decided to develop the Airport with a private sector participation at Devanahalli near Bangalore in the State of Karnataka which is called as Greenfield Project and to this effect, the Government of Karnataka has authorized KSIIDC to be a nodal agency for undertaking all activities towards development of the Airport as a joint venture. He would also press into service certain clauses in the Concession Agreement which,



according to him, would support his cause. He would contend that the development and construction of the Airport is in accordance with the provisions of the said agreement and the operation and maintenance of the Airport and performance of the Airport activities is in accordance with the provisions of the Agreement. Thus, according to him, the State has a substantial role to play in bringing about the BIAL. He would further contend that this court in the case of **FLEMINGO DUTYFREE SHOPS PVT. LTD. Vs. UNION OF INDIA AND ORS** reported in **AIR 2009 NOC 1204(KAR)** has held that BIAL is a State under Article 12 of the Constitution of India and discharges the statutory functions/duties under the Airport Authority of India Act. He would further press into service the definition of a public authority under the RTI Act in support of his contention. He also contends that the ownership and control substantially vests with the Government. He would also contend that the BIAL cannot take any decision or undertake any action in



support of certain matters without the written consent of the State Promoters inasmuch as, they cannot borrow, take loans or incur any indebtedness in excess of 25 Crores for purposes of liquidity management and hosts of other exigencies as contemplated under the SHA.

10. Sum and substance is that the BIAL is "substantially financed" and is "public authority" and a State under Article 12 of the Constitution of India thus attracting the provisions of the RTI Act.

11. Mr. Manjunath, learned counsel appearing for the KSIDC would contend that the phrase "substantial funding" is not at all defined under the RTI Act. Insofar as the import of the definition of "Substantial funding" as under Section 14 of the CAG Act is concerned, he would submit that the use of same words in similar connection in a later statute gives rise to the presumption that they are intended to give the same meaning of the earlier statute. Insofar as the RTI Act is concerned, he would



contend that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also contain corruption and to hold Government and their instrumentalities accountable to the governed. He would also further contend that the second respondent had sought for disclosure of information contained in sub clauses 1 to 27 of Section 4(1)(b) of the Act. He would submit that the information contained in clauses 1 to 27 of Section 4(1)(b) of the Act are available with the State Government as well as with the third respondent. According to him, the third respondent, being a public authority, as defined under the RTI Act could furnish the same. Indeed, he would put it on record that the information which is in its possession with regard to the petitioner, can be made available to the second respondent.



12. Having heard the learned counsel appearing for the parties, the two points which would fall for determination in this writ petition is

(1) whether the BIAL – petitioner can be classified as “public authority” and is “substantially funded” so as to attract the provisions of the RTI Act;

(2) whether the BIAL can be construed as a State under Article 12 of the Constitution of India and that the writ petition is maintainable.

13. Before advertng to the contentions, it is necessary for us to look into the provisions of the RTI Act. Section 2(h) of the Act defines as to who is a public authority.

“(h) “public authority” means any authority or body or institution of self-government established or constituted-

(a) by or under the Constitution;

(b) by any other law made by Parliament;



- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government and includes any-
 - (i) body owned, controlled or substantially financed;
 - (ii) non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

14. To appreciate as to whether the petitioner can be construed as "public authority" it is required to look into as to what is public authority. Public Authority means any authority or body established or constituted (i) by or under the Constitution (ii) by any law made by the appropriate government, and includes any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate government; it is a body which exercises public functions; a public authority may be described as a person or



administrative body entrusted with functions to perform for the benefit of the public and not for private profit. Not every such person or body is expressly defined as a public authority or body, and the meaning of a public authority or body may vary according to the statutory context: one of the distinguishing features of an authority not being a public authority, is profit making. It is not incumbent that a body in order to be a public body must always be constituted by a statute; for an authority to be a 'public authority' it must be an authority exercised or capable of being exercised for the benefit of the public.

15. We are required to look into the SHA, the Concession Agreement and the SSA to ascertain whether the petitioner is substantially funded so as to attract the definition of Public Authority. According to the recitals in the concession Agreement, it would indicate that the petitioner is established with the participation of KSIIDC, AAI and other private promoters each of whom had agreed



to participate as a shareholder in BIAL for the development, design, financing, construction, completion, maintenance, operation and management of the Greenfield Airport at Devanahalli, Bangalore. The concession agreement discloses as to what are the concessions granted to the BIAL. It is to be found in Article 3 of the Concession Agreement. It is indicated that the Government of India has granted BIAL exclusive right and privilege to carry out the development, design, financing, construction, completion, maintenance, operation and management of the Airport which are required to be provided by the AAI. The BIAL has accepted the concession granted to it by the Government of India pursuant to Article 3.1.1 of the said Concession Agreement. It is also to be noticed that each of them had agreed to participate as a shareholder in the BIAL. The scope of the project is also to be found in the Concession Agreement. The scope of the project as per Article 2.1 would indicate (1) the development and construction of the



Airport at the site in accordance with the provisions of the agreement; (2) the operation and maintenance of the Airport and performance of the Airport Activities and Non-Airport activities in accordance with the provisions of the Agreement. Schedule 3 to the said Concession Agreement would give a fairly long list of Airport Activities which includes the services and facilities. For our purpose, the more relevant document would be the State Support Agreement. Clause-3 of the State Support Agreement would deal with the State Financial Support. Clause 3.1 is in support of acknowledgments. It is stated that the authorities to these documents acknowledge and agree that the shareholders, lenders and BIAL are willing to implement the project based on reliance of the commitment of Government of Karnataka to make available to BIAL the State Financial Support being a sum not exceeding Rs.3500 Million on the terms and conditions set out. The repayment clause is to be found in clause 3.10 which would indicate that subject to clauses



3.8, 3.9 or 3.10.3, as the case may be, BIAL shall pay repayment instalments in reduction of the aggregate of outstanding amounts under the State Financial Support in accordance with the terms of Schedule 10. Clause 3.10.3 starts with a non-obstante clause which would indicate that notwithstanding the provisions of clause 3.10.1, if the cash position of BIAL, after taking into account its business obligations, provisioning for statutory reserves, dividends, approved expansion and meeting of Debt service obligation, is surplus, then BIAL will use such surplus for earlier/accelerated repayment of the outstanding State Financial Support and/or specific bullet repayments on a year to year basis.

16. What is significant to note is that no interest shall be payable by BIAL on the outstanding amounts of the State Financial Support paid to BIAL pursuant to this clause 3. This is to be found in clause 3.11. Schedule 3 of the SSA would deal with the tax exemption and other



benefits. The said schedule-3 further indicates the benefits which are extended to BIAL as follows

- (1) Exemption from payment of entry tax on machines, equipment, capital goods and construction material procured in the execution of turnkey construction contract or any other works contract related to the Airport for a period of three years or till the Airport Opening Date, whichever is earlier, subject to the condition that each invoice should be for not less than Rs.25 lakhs (Rs.one lakh for construction materials); and
- (2) BIAL will be exempted from payment of property tax to the local authority for a period of five (5) years from the "Site Delivery Date" as defined in the Land Lease Agreement;
- (3) Exemption of stamp duty and registration charges for the transfer of the site to BIAL as stated in Clause 11.1



(4) BIAL shall be exempted from payment of fees to BIAAPA towards grant of permission for change in the use of land as stated in Clause 11.5

(5) Payment of Road Cess to BIAAPA is not applicable to BIAL as stated in Clause 11.6.

Indeed, this is qualified by stating that the exemption/benefits do not apply to Service Provider Right Holders. Schedule - 10 to the said agreement would relate to repayment of instalments which would indicate that the outstanding State Financial Support shall be repayable in twenty (20) equal half yearly instalments, the first such instalment becoming due and payable on the 30th of April in the eleventh (11th) Financial Year and the next on 31st October in the same year (30th of April and 31st October being the "Reference Dates").

17. This is followed by another supplemental State Support Agreement between the Government of Karnataka as well as BIAL, the petitioner. Indeed, a compendious



reading of the SSA would clearly indicate that apart from the fact that the Government of Karnataka has advanced substantial amounts by way of cash, it has also exempted the BIAL from many such statutory payments like payment of stamp duty, payment of conversion charges etc. Indeed, the definition of "public authority" is required to be read along with sub-clause (d)(i) and (ii) of Section 2(h) of the RTI Act. Sub-clause (i) would relate to a body owned, controlled or substantially financed and (ii) the non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

18. The courts have taken a view that institutions engaged in matters of high public interest or performing public functions have to be considered as 'State' for enforcing fundamental rights. In **RAMANA DAYARAM SHETTY Vs. INTERNATIONAL AIRPORT AUTHORITY OF INDIA** as early as 1979 the Supreme court observed



that "if the functions of the Corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as instrumentality or agency of government.

19. I propose to proceed on the premise that the petitioner is a non-Government organization, substantially financed by the Government. In construing Section 2(h) of the RTI Act, it is required to see the aims and objects of the Act which provides reference to preamble of the Act which would read as under:

"AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited



fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal."

Indeed, it is to be noticed that the public authority is amenable to the jurisdiction of RTI Act. In the case on hand, it is to be noticed that as observed earlier, the wording "non-government organisation substantially financed, directly or indirectly" is required to be split into two. Whether the non-government organisation is substantially financed directly that is the cash flow would come from the Government agency or indirectly which would necessarily mean that the exemptions are granted to the non-government organisation. In the case on hand, it is to be noticed that a perusal of the agreements would conclusively go to show that the petitioner-BIAL is a beneficiary of innumerable exemptions which, if one were to translate into cash flow would certainly cascade into a



substantial amount. Another factor which is required to be taken note of is large chunk of land to the extent of 4000 acres of prime agricultural land is acquired by paying enormous amounts as compensation to the farmers who owned the lands. It is estimated that this amount would run into hundred of crores. It was acquired for the said purpose i.e., BIAL and the same is conveyed to the petitioner-BIAL on a meagre sum of Re.1/- per year. It is to be noticed that the project is a joint venture which is partly owned by the State promoters. Apart from the 26% equity, the State promoters including Government of Karnataka have also provided large amount which then would be more than the estimated Rs.1000 Crores.

20. It is to be noticed that excluding the debts at initiation phase, the Government's finance is at 30.8% and the private promoters financing amounts to 17.1% as indicated in the statement of objections. The security to



the lenders for the project is also to be found in Clause 14.1.2 of the Concession Agreement. The State Government has also ensured that uninterrupted supply of power and water has to be given to the petitioners. If one were to take these substantial concession in terms of indirect finance which is given indirectly, it leads to the conclusion that the petitioner is a non-government body which is substantially financed directly or indirectly by the funds provided by the appropriate Government. The finance could be either as investment or towards the expenses, or both. The way in which the words have been placed, indicates that perhaps (i) relates to the investments and (ii) relates to the running expenses. Thus every institution which is owned by the Government or not is clearly covered. By any norms, whenever over 50% of the investment in a body belongs to any entity, it is said to be owned by that entity. Since bodies owned by Government have been mentioned separately, the words "Controlled" and "Substantially financed" will have to be



assigned same meaning not covered by ownership. Thus, it is evident that the intention of the parliament is to extent the scope of the right to other organisations which are not owned by it. No words in an Act can be considered to be superfluous, unless the contradiction is so much as to render a significant part meaningless or they violate the preamble. Therefore, it becomes necessary to consider a situation where an entity may be controlled by Government without ownership or substantial finance. The interpretation given by some that 'control' means any kind of control like that exercised by the Registrar of Societies over co-operative societies, or by RBI on all private banks is too wide and certainly are not supported by the law. If we take this very wide interpretation, all companies are controlled by the Registrar of Companies, all sales tax dealers by the sales tax authorities and so on. By this logic, all companies, sales tax dealers amongst others will have to give information under the RTI Act.



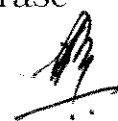
Such a wide interpretation is not clearly intended in the law.

21. Let us now consider what are the implications of the words 'substantially financed'. It is obvious that as per section 2(h)(i) "body..... substantially financed" would be a body where the ownership may not lie with the Government, nor the control. Hence, clearly the wording 'substantially financed' would have to be given meaning at less than 50% holding. The company law gives significant rights to those who own 26% of the shares in a company. Perhaps this could be taken to define the criterion of 'substantial finance'. The finance could be as equity or subsidies in land or concession in taxation.

22. Thus, I am of the view that the twin conditions of the RTI Act are attracted, inasmuch as, the petitioner-BIAL is required to be construed as a public authority which is substantially financed either directly or indirectly by the funds provided by the appropriate government.



23. Indeed, another contention was raised by learned counsel appearing for the petitioner that the State Commission was not justified in importing the definition of "substantially financed" from another enactment. He would contend that both the CCAG as well as the RTI Act would operate in different fields. Hence they cannot be construed as *pari materia*. But however, what is significant to note is that the word "substantially financed" is not defined under the RTI Act. In this regard, one will have to fall back upon either the dictionary meaning of "Substantially Financed" or for that matter, if the said phraseology is defined in some other enactment, the same can be imported in this context. In this regard, one can refer to the Division Bench ruling of this Court in the case of **BHAVANI HOUSING COOPERATIVE SOCIETY LIMITED (R) Vs. BANGALORE DEVELOPMENT AUTHORITY** reported in **MANU/KA/8325/2006**. This Court while considering whether the definition of a particular phrase



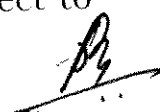
can be imported in a particular enactment has held that if the Acts are pari materia to each other, then the definition of one Act can be imported to the other Act. As observed, "substantially financed" is not defined in the RTI Act. What would the phrase "substantial" mean has to be understood in contradiction to the word trivial and where the funding is not trivial, to be ignored as pittance, the same would be substantial funding because it comes from public funds. It need not necessarily be by a cash flow but also by any other kind. Hence, I am of the view that the petitioner BIAL can be classified as a public authority and a non-Government organisation which is substantially financed directly and indirectly by funds provided by the appropriate Government.

24. Insofar as whether the BIAL can be classified as a State under Article 12 of the Constitution of India is concerned, this question should not detain us any longer, inasmuch as, a Division Bench of this court in



M/S.FLEMINGO DUTYFREE SHOPS PVT. LTD. Vs. UNION OF INDIA AND ORS. reported in **AIR 2009 (NOC) 1204 (KAR)** has ruled that the BIAL is a State. Hence, it is amenable to writ jurisdiction under Article 226 of the Constitution of India.

25. If one were to hold that the petitioner-BIAL is a public authority and though a non-government organisation, directly and indirectly funded, what would be the relief which the second respondent is entitled for. Indeed, it is to be noticed that the second respondent has made an application seeking information under Section 4 of the RTI Act. Section 4 would deal with obligations of public authorities which would indicate that the said public authority is required to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to



availability of resources, computerised and connected through a network all over the country. Sub-Section (1)(b) contemplates that all these information is required to be published within 120 days from the enactment of this Act which would include the particulars of its organisation, function and duties of its officers and employees; the procedure followed in the decision making process, including channels of supervision and accountability; the norms set by it for the discharge of its functions; the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions, a statement of the categories of documents that are held by it or under its control and many such information which would make the institution transparent. In this regard, it is to be noticed that the petitioner has stated in the synopsis that substantial information which is within their domain has already been published on their web house. Indeed, the petitioner would contend that all the information which is required



to be published under Section 4 of the Act is already available with the KSIIDC. Hence, according to it no prejudice is being caused to the rights of the individual enquiring about the information of BIAL. Further more BIAL has, by itself provided certain details of its composition and working on its webpage even though it was not required to do so. BIAL has also provided such details to promote transparency and efficiency.

26. The main plank on which the arguments were addressed was that the BIAL cannot be classified as public authority under the Act, when all such information is already available in the public forum. Indeed, it is to be noticed that that is also the stand of the Governmental agency i.e., KSIIDC. In fact, the KSIIDC have clearly indicated that whatever information which is available with them shall be furnished. Indeed, they would contend that only certain information regarding the petitioner is with them, particulars of the organisation, functions and



duties and statements of the board etc. But however, they would contend that this information is within the mischief of the third party information under Section 11 of the RTI Act and can be furnished only after notice to the petitioner. Since, the information which is sought by the second respondent pursuant to an application under Section 4 of the RTI Act having been already available, I am of the view that the impugned order, in the circumstances, does not warrant interference, inasmuch as, what has been directed by the Commission is to publish or make available the information as contemplated under Section 4 of the Right to Information Act.

Consequently, the petition stands rejected.

Sd/-
Judge

AI/-